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Libel and Slander: Words Imputing Crime and Immorality

V. W. D.

The Supreme Court affirmed this judgment stating that there was no ground for such suit being brought inasmuch as a settlement had been arranged between the former attorney and the client and the presumption that knowledge acquired by an attorney is imputed to his client could not be rebutted by showing that, as a matter of fact, such knowledge was not communicated.

The general rule that a client is bound by the knowledge of his attorney is based upon the principle that it is the attorney's duty to communicate to his client the knowledge which he has respecting the subject-matter and the presumption that he will fulfill that duty.[1]

The two and only situations in which an attorney is not at liberty to disclose such information are (1) where such information is confidential as to former clients and (2) where the attorney is acting in fraud of his client; for when it is not the attorney's duty to communicate such knowledge or where it would be unlawful for him to do so, as for example where it had been acquired confidentially as attorney for a former client in a prior transaction, the reason of the rule ceases and in such a case an attorney is not expected to do that which would be a betrayal of professional confidence and his client will not be bound by his attorney's confidential information. This exception to the rule had its origin in England in cases involving large estates where men of great professional eminence were frequently consulted. In such cases it would be very mischievous to apply the rule for it would make the most eminent attorney the most dangerous to employ.[2]

Where an attorney acts fraudulently the presumption of communication is rebutted.[3] Just as soon as he forms the purpose of dealing with his client's property for his own benefit and advantage or for the benefit and advantage of persons who are opposed in interest, he ceases in fact to be an attorney acting in good faith for his client, and his actions thereafter based upon such purpose are deemed to be in fraud of the right of his client and the presumption that he has disclosed all the facts that have come to his knowledge no longer prevails.[4]

This doctrine of imputed knowledge rests upon one of either two grounds: (1) Upon the principle of legal entity, or (2) upon the ground that when a client has consumated a transaction in whole or in part through an attorney, it is contrary to equity and good conscience that he should be permitted to avail himself of the attorney's participation without being responsible both for his attorney's knowledge and for his attorney's acts.[5]

JOSEPH R. GRENFELL.

Libel and Slander: Words Imputing Crime and Immorality.— The right protected by the law of defamation is the right of reputation. Causing damage to the reputation of another may be called a non-physical tort as distinguished from a physical tort. At common law it was not actionable *per se* orally to impute a want of chastity to a woman, nor orally to impute to her professional or habitual unchastity. The

[1] The Distilled Spirits, 11 Wall. (U. S.) 367.

[2] *Norsley v. Earl of Scarborough*, 3 Atkyns 392.

[3] *Melms v. Pabst Brewing Co.* 93 Wis. 154.

[4] *Benedict v. Arnoux*, 154 N. Y. 715.

[5] *Irvine v. Grady*, 19 S. W. 1092.

law was otherwise in Scotland. The usual reason given for the lack of the action at common law was that to import unchastity to a woman was punishable in the spiritual court.[1] Under the so-called custom of London, it came to be held that to call a woman a name which undoubtedly imputed unchastity was actionable, and so in Southwark and Bristol, it is now generally actionable to call a woman a name which imputes to her professional or habitual unchastity. Courts have overthrown the common law and held that to charge the crime is actionable *per se*.

The English law is that the crime must be punished corporally and not merely by fine, but that it need not be indictable.[2] In this country the law is that the offense must be an indictable one involving moral turpitude or subjecting the offender to infamous punishment.[3]

It is interesting to note some of the American cases have held, following the old rule of the common law, that it is not actionable orally to impute to a woman professional or habitual unchasity.[4] Other cases have held that by the modern American common law it is actionable *per se* to falsely impute, orally, unchastity to a woman, and consequently that it is actionable *per se* falsely to impute to her orally professional or habitual unchastity.[5]

In *Grant v. Yates* (Wis. 1924) 199 N. W. 53, an unmarried woman was called a "sport." An action was brought claiming that this statement was slanderous *per se* as charging plaintiff with habitual or professional unchastity. The trial court sustained a general demurrer to the complaint and on appeal its decision was affirmed. The court held that in its ordinary meaning the word did not have the significance alleged, that the law is slow to attach a fugitive or local meaning to words in slander actions. The construction of the language used is always difficult in this class of cases.[6]

The general proposition is that to accuse any woman, whether married or unmarried, of unchastity, is slanderous. Words imputing to a

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[1] 1 Freem. C. L. Rep. 296, 89, Eng. Reprints 214; *Osborn v. Wright* (1688) 2 Mod. 296, 86 Eng. Reprints 1082; 11 A. L. R. 669, note.

[2] *Webb v. Bevan,* 11 Queens Bench Div. 609.

[3] In the leading case of *Brooker v. Coffin,* Johnson 188, 4 Am. Dec. 337, Bigelow's Leading Cases of Torts, 77—this test was given. "In case the charge, if true, will subject the party charged to an indictment for a crime involving moral turpitude, or subject him to an infamous punishment, then the words will be in themselves actionable." See, also: *Pollard v. Lyon,* 91 U. S. 225; Anonymous, 60 N. Y. 603, 19 Am. Rep. 174; *Fredrickson v. Johnson,* 60 Minn. 337, 62 N. W. 388; *Collyer v. Collyer,* 50 Hun. 422, 3 N. Y. S. 310; Cooley on Torts (3rd ed.) 375; Townshend, Slander and Libel, par. 301.

[4] Del., Idaho, Md., Mont., N. H., N. Y., Oregon, S. C., Texas, and Vermont.

[5] Iowa, Neb., Ohio and Wisconsin.—In this state and practically all states under modern statutes adultery and fornication are actionable. *Ranger v. Goodrich* (1863) 17 Wis. 79; *Gibson v. Gibson,* (1877) 43 Wis. 23; *Klewin v. Barman,* (1881) 53 Wis. 244; *Hacker v. Heiney,* (1901) 111 Wis. 313; *Culver v. Marx,* (1914) 157 Wis. 320.

[6] *Frazien v. Grob,* 183 S. W. 1083; *Stegemann v. Paulsen* (Iowa) 190 N. W. 929; *Ferber v. Brueckl,* 243 S. W. 230.

woman want of chastity are actionable *per se*.[7] An assertion merely of libidinous tendencies or general bad conduct is not sufficient.[8] An actionable imputation may be made by the use of cant or slang words or provincialisms which, according to their ordinary meaning, are not defamatory.[9] The court in this case saw fit not to attach a transient meaning to the word "sport" and inasmuch as no extenuating facts are shown and the case arises on demurrer it was properly decided.[10]

V. W. D.

Licenses: Bobbers not Barbers.—The discussion under this epigrammatic caption is occasioned by the recent decision of the Minnesota Supreme Court[1] State v. De Guile (Minn. 1924), 199 N. W. 569, declaring that a statute,[2] making it unlawful for any person to follow the occupation of a barber unless he shall have first obtained a certificate of registration is not applicable to women employed in so-called beauty parlors who dress and cut, or bob women's hair. This in spite of the fact that the statute says that "to shave or trim the beard or cut the hair of any person for hire or reward . . . shall be construed as practicing the occupation of barber within the meaning of this act."[3] The court bases its decision upon the ground that although beauty parlors were in existence at the time of the enactment of the statute the legislature manifestated no desire to include beauty parlors,[4] and even indicated that they did not wish to include them. Being in derogation of a common right and penalizing conduct devoid of moral turpitude, the statute must be strictly construed and not extended by implication to classes not clearly within its terms.[5] The unlawful act must be specifically and clearly described and provided for. "It is not enough that the case may be within the apparent reason and policy of the Legislation upon the subject, if the Legislature has omitted to include it within the

[7] *Peterson v. Rasmussen*, 191 P. 30; *Coquelet v. Union Hotel Co.* (Md.) 115 A. 813; *Richardson v. Roberts*, 23 Ga. 215; *Hasley v. Brooks and Wife*, 20 Ill. 115; *Reynolds v. Tucker and Wife*, 6 Ohio St. 516; *Bereford v. Wible*, 32 Penn. St. 95. In Wisconsin the general rule being that words which impute to another a crime involving moral turpitude, and which subjects the party committing it to a fine or imprisonment are actionable. *Beneway v. Conyne*, 3 Chand. 214; *Ranger v. Goodrich*, 17 Wis. 28; *Gibsen v. Gibsen*, 43 Wis. 23; *Mayer v. Schleichter*, 29 Wis. 646; *Hacker v. Heiney*, 111 Wis. 313.

[8] *Martin v. Sutter*, 212 P. 60; *K— v. H—*, 20 Wis. 239; *Robertson v. Edelstein*, 104 Wis. 440, 80 N. W. 724; 1 Starkie on Slander, 422, 431.

[9] *Wimer v. Allbough*, 78 Iowa 79, 42 N. W. 587, 16 Am. S. R. 422; *Acker v. McCullough*, 50 Ind. 447; *Logan v. Logan*, 77 Ind. 558; *Clute v. Clute*, 101 Wis. 137; Newell, Slander and Libel (2nd ed.) 603.

[10] *Lubcke v. Teckam*, 179 Wis. 543.

[1] *State v. De Guile*, 199 N. W. 569.

[2] Ch. 424, Laws of Minn. 1921.

[3] Id.

[4] The opinion states: "It would have been easy to say so."

[5] "Taxes by way of licenses for the pursuit of ordinary business or common occupation must be imposed in clear and unambiguous language." *Wilson v. D. C.* 26 App. D. C. 110; *State v. Small*, 29 Minn. 216, 12 N. W. 703.